

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

<hr/>		MDL No. 1456
IN RE PHARMACEUTICAL INDUSTRY	)	Master File No. 01-12257-PBS
AVERAGE WHOLESALE PRICE LITIGATION	)	
<hr/>	)	Judge Patti B. Saris
	)	
THIS DOCUMENT RELATES TO:	)	
State of California, <i>ex rel.</i> Ven-A-Care v.	)	
Abbott Laboratories, Inc., <i>et al.</i>	)	
CASE #: 1:03-cv-11226-PBS	)	
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**STATE OF CALIFORNIA'S STATUS REPORT-APRIL 1, 2006**

The undersigned counsel, on behalf of plaintiff STATE OF CALIFORNIA  
("CALIFORNIA") hereby submits the attached Status Report to the Court in accordance with the  
Court's June 17, 2004 Procedural Order.

Respectfully submitted,

BILL LOCKYER  
Attorney General for the State of California

Dated: March 30, 2006

By: /s/ Timothy C. Foote  
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**Attorneys for Plaintiff,  
STATE OF CALIFORNIA**

**MDL 1456 Status Report**  
**State of California, *ex rel.* Ven-A-Care v. Abbott Laboratories, Inc., *et al.***  
**Case No.: 1:03-cv-11226-PBS**

**First Amended Complaint in Intervention**

Plaintiffs filed a First Amended Complaint in Intervention on August 25, 2005.

**Motion to File Unredacted Exhibits Under Seal**

On August 25, 2005, plaintiffs filed a motion for leave to file unredacted Exhibits under seal. The Exhibits are Exhibits A-K and Exhibits M-R to the First Amended Complaint in Intervention. Redacted versions of such Exhibits were filed (and served on existing parties through Verilaw) on August 25, 2005, along with the First Amended Complaint in Intervention. The Court granted such motion, and the unredacted Exhibits have been filed under seal.

**State of California's Election to Decline**

On September 9, 2005, the State of California filed a motion for leave to file "State of California's Election to Decline as to Certain Defendants and Allegations" ("Election to Decline") under seal, which the Court granted on September 14, 2005. The Election to Decline was filed under seal on September 14, 2005.

**Qui Tam Plaintiff's Notice of Election/Dismissal**

On or about September 12, 2005, the *qui tam* plaintiff filed a motion for leave to file its "Notice of Election to Proceed and Notice of Dismissal" ("Notice of Election/Dismissal") under seal. The Court granted such motion, and the Notice of Election/Dismissal was filed under seal on September 14, 2005.

**Case Management Order (CMO) 18**

On December 13, 2005, the Court issued CMO 18, providing a briefing schedule for the served Defendants' motions to dismiss, as well as rules regarding the conduct of discovery and

document access during the period required to brief and decide the motions to dismiss.

### **Motions to Dismiss**

On January 17, 2006, the served Defendants filed a Joint Motion to Dismiss Plaintiffs' First Amended Complaint in Intervention. In addition, Abbott Laboratories Inc., B. Braun of America Inc. and ZLB Behring LLC filed individual Motions to Dismiss.

### **Oppositions to Motions to Dismiss**

Plaintiffs filed their Oppositions to the joint and individual Motions to Dismiss on March 2, 2006, in accordance with CMO 18. In addition, Plaintiffs filed a objections in response to Defendants' request for judicial notice of the documents attached to their Motion to Dismiss.

### **Hearing on initial Motions to Dismiss**

On March 14, 2005 the court set a Motion Hearing on Motions to Dismiss re: California ex rel Ven-a-Care case on May 22, 2006, at 3:00 p.m.

### **Additional Miscellaneous Filings**

(1) On January 18, 2006, Plaintiff California filed a Motion to File under Seal its Ex Parte Application for a partial lifting of the seal. The Court granted that Motion on January 27, 2006, and granted the partial lifting of the seal on February 2, 2006.

(2) On January 27, 2006, Plaintiff California filed a Motion to File Under Seal a Stipulation and Proposed Order to Extend Seal of Relator's First Amended Complaint as to certain specific Defendants. The Court granted the Motion to File the Stipulation Under Seal on February 16, 2006. The Court denied the Stipulation on February 17, 2006.

### **Anticipated Filings**

Plaintiffs anticipate a motion to for a new CMO, to be coordinated and jointly filed with Defendants, in order to establish an additional briefing schedule for four (4) foreign Defendants

for whom foreign service is currently underway but not yet completed, which would set forth a single set of dates for briefing all of the foreign Defendants' anticipated Motions to Dismiss. Plaintiffs have been informed that two of the defendants (Lipha, S.A. and Merck KGaA) have been served. On March 16, 2006, the court granted a joint motion to stay response for Lipha, S.A. and Merck KGaA and ordered that a proposed scheduling order be submitted within 30 days.

California may file additional motions/pleadings, under seal when necessary, to dispose of the state's interests in matters remaining under seal. Plaintiffs will request a Status Conference and the entry of a Case Management Order by a motion to be filed after the Court has adjudicated the served Defendants' joint and individual Motions to Dismiss. In addition, the Relator will file its Second Amended Complaint with respect to the remaining Defendants and claims that have not been dismissed and on which California has thus far declined to intervene.

**CERTIFICATE OF SERVICE**

I, Timothy C. Foote, hereby certify that on March 30, 2006, I caused a true and correct copy of the foregoing, **STATE OF CALIFORNIA'S STATUS REPORT-APRIL 1, 2006**, to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

Dated: March 30, 2006

/s/ Timothy C. Foote  
TIMOTHY C. FOOTE  
Deputy Attorney General